IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 704 OF 2006

Mrs. Kalpana Suresh Nerkar ..Applicant
V/s
Mr. Suresh Shankar Nerkar & Anr. ..Respondent.

Mr. S.P Kadam for the applicant

Mr. S.R.Shinde,A.P.P. for the State.

CORAM : J.H. BHATIA, J.

DATE : 9TH JANUARY, 2007.

P.C.

. This application is filed by the petitioner, who is wife of respondent No.1. The relations between the two got strained and the petitioner filed a complaint, on the basis of which the criminal Case No. 1397/PW/05 came to be registered in the Court of Additional Chief Metropolitan Magistrate, 24th Court, Borivali for the offence punishable under section 498A, 406 of Indian Penal Code. According to the complainant, the husband/respondent had misappropriated the Streedhan property, which was given to her by her mother at the time of marriage. During the investigation in the case the police made a panchanama and seized some property

including one computer and a cupboard. The applicant made an application before the learned trial Court for custody of the said computer and the cupboard. The respondent-husband also claimed the said property contending that he had purchased the said computer with his own funds. After hearing the evidence led by the parties, the Additional Chief Metropolitan Magistrate passed order dated 11/12/2003 directing that the said property be given in custody of the present applicant on her executing bond of Rs. 35,000/-. That order was challenged by the husband before this Court in Criminal Application No. 190/2004. By an order dated 12/12/2005, this Court had set aside the order passed by the Additional Chief Metropolitan Magistrate and remanded the matter with a direction to hear the parties again and to dispose off the application on merit within a period of four weeks.

2. After remand the parties were heard and Additional Chief Metropolitan Magistrate passed the impugned order whereby he directed the applicant to return the property which was given to her as per the earlier order and further directed that the property be

given in custody of the respondent on his executing bond of Rs. 35,000/- and given an undertaking that he will produce the same before the Court as and when directed. This order is challenged in the present application by the applicant.

3. Notice of the application was served on respondent No.1 but he has not appeared.

4. Heard Mr. Kadam, the learned Counsel for the applicant and Mr. Shinde, APP for the State-respondent No.2.

5. The evidence led before the lower Court reveals that the said computer was purchased from the DOT Computers in the name of the respondent. According to the applicant the payment of the price of the computer was made by her brother after withdrawing the amount of Rs. 63,000/- from her bank account. It was also brought on record that the applicant and respondent both had been to the DOT Computers for purchase of the computer. The receipt was issued in the name of the respondent. The amount was counted by the brother of the applicant and was handed over to the shopkeeper. On

the other hand, according to the respondent, he had booked the computer by paying amount of Rs.6,500/- by cheque and balance amount was paid by him in cash. The learned Additional Chief Metropolitan Magistrate noted that according to the plea of the present applicant her mother had advanced amount of Rs. 50,000/- to the respondent and with that amount he had purchased the said computer and a cupboard. However, the evidence was given before the Court to the effect that her brother had withdrawn the amount of Rs. 63,000/- from Bank and he has directly paid amount to the dealer. The learned Additional Chief Metropolitan Magistrate noted that the brother of the applicant had withdrawn the amount from his bank account on 15/6/2001, while computer was purchased on 20/9/2001, i.e. more than three months after the said amount was withdrawn. Taking into consideration these circumstances, and the fact that the computer was actually purchased in the name of the respondent and receipt was issued in his name, prima facie he appears to be the owner of the property.

6. In view of the circumstances noted above, the learned Additional Chief Metropolitans Magistrate passed the impugned order. This is not the final order about

the disposal of the property. The order is passed only for custody pending final hearing and disposal of the criminal case, which is still pending. Therefore, I do not find any fault in the impugned order.

7. For the reasons stated above, the application stands rejected.

(J.H. BHATIA, J.)

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